IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 1355 OF 2005

Madhukar Bhiku More ...Petitioner

Versus

Kailash R. Khandelwal & Ors ...Respondents

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Mr. P.G. Kharat, Advocate for Petitioner

Mr. N.J. Devashrayan, Advocare for Respondent No.1

Mr. V.B. Konde Deshmukh, A.P.P. for State.

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CORAM: SMT. V.K. TAHILRAMANI, J.

DATED: 30TH JUNE, 2005

P. C.:-

1. Heard the learned advocate for the petitioner and the learned advocate for the respondent No.1 i.e. original complainant.

2. Though the number of prayers have been made in the present writ petition, the learned advocate for the petitioner has stated that he is pressing only one prayer i.e. for quashing of the order dated 26.4.2001 whereby process came to be issued against the petitioner under Section 138 of Negotiable Instruments Act. The said process was issued in case No.938/C/2002 and the said case is pending before the learned Metropolitan Magistrate 31st Court, Vikhroli,

Mumbai.

3. The petitioner had preferred an application for recalling of process before the learned Magistrate which came to be rejected by the learned Magistrate. In view of the observations of the Supreme Court in the case of **Adalat Prasad Vs. Rooplal Jindal & Ors. 2004 (4) Mh.L.J. 274 and Subramaniun Sethuraman Vs. State of Maharashtra & Anr, 2005 (1) Mh.l.J. 626,** it is quite clear that the Magistrate cannot recall process which has been issued by him. In such case no fault can be found with the order of the learned Magistrate rejecting the application of the petitioner for recall of process.

4. However, for the reasons recorded in my order dated 13th June, 2005 passed in Criminal Writ Petition No.213 of 2005 and order dated 21st June, 2005 passed in Criminal Application No.550 of 2005, the petitioner has an efficacious remedy of preferring revision against the order of Magistrate issuing process. Hence, in my view, it would be appropriate that the petitioner prefers revision before the concerned Sessions Court against the order of the Magistrate issuing process.

5. Liberty is granted to the petitioner to prefer revision before the concerned Sessions Court. The

learned advocate for the petitioner states that the necessary revision would be filed by 22.7.2005. It is clarified that the revision shall be preferred in respect of the order of the Magistrate issuing process against the petitioner and not in respect of order of the Magistrate dated 21.12.2004 rejecting the application of the petitioner for recalling of process. The learned advocate for the petitioner states that the original complainant will be given two days advance notice in respect of filing of revision. The learned advocate for the respondent-original complainant fairly states that no objection would be raised by the complainant in respect of limitation in filing revision by the petitioner before the Sessions Court.

6. On the necessary revision being preferred by the petitioner before the concerned Sessions Court, the concerned Sessions Court shall dispose of the same on merits after hearing necessary parties.

7. Criminal writ petition is disposed of.

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